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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 003768

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TAGS: [PGOV](#) [PREL](#) [IZ](#)  
SUBJECT: ARTICLE 140: UNCERTAINTY FUELS ARAB-KURD TENSION

REF: A. BAGHDAD 2763  
[1](#)B. BAGHDAD 3693

Classified By: Ambassador Ryan C. Crocker for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary: Article 140 High Committee Chairman (and Minister of Science and Technology) Raid Fahmi gave Senior Advisor an overview on November 12 of committee developments since Fahmi took office at the end of July. Fahmi asserted that the committee's recent progress will help alleviate Kurdish concerns about the inevitable referendum delay past December 31, although he admitted Kurdish leaders have done little to prepare their public. He characterized the committee's approach as fair and transparent, with a deliberate focus on technical preparations and not political deal-making. The committee is exploring the use of the 1957 census as a method to develop a voter registry for a referendum, as well as beginning to address key issues such as the referendum question itself. However, he acknowledged that internal boundary change recommendations being developed by the committee did not address fundamental Sunni Arab concerns, e.g. on Ninewa Province, and will eventually face political opposition. We want a lasting solution to Article 140 implementation, Fahmi said, with "consensus and not coercion." But while the process he outlined may narrow the issues in play, it will likely stall out, due to the opposition of Sunni VP Tariq al-Hashimi, when the committee refers its recommendations to the Presidency Council. In that case, the law provides for recourse to a neutral arbitrator or UN mediation. And meanwhile, uncertainty over how the sensitive provincial border/Kirkuk issues are to be resolved is not only fueling Arab-Kurd tensions in the north, but also the insurgency. End Summary.

#### Chairman's Approach to Implementation

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[1](#)2. (C) Fahmi said he was hesitant when first approached by Kurdistan Regional Government (KRG) President Barzani and others in July to consider becoming Chairman of the Article 140 high committee. The committee was established in August 2006 by Prime Minister Maliki to implement Article 140 of the Iraqi Constitution (and Transitional Administrative Law (TAL) 58), articles intended to redress Saddam-era Arabization policies. The committee had been without a chairman since March when then-Justice Minister Hashim al-Shibli resigned, complaining of a lack of political will to implement Article [1](#)140. Fahmi asked whether there was a willingness to move forward politically and was assured by PM Maliki that he was serious about implementation and that the commitment of the GOI was clear. Article 140 is part of the Constitution, and the GOI has the duty to implement it even though it is a difficult problem, Fahmi asserted. PM Maliki appointed Fahmi (Iraqqiya, Iraqi Communist Party) on July 31 (ref a).

[1](#)3. (C) He works on the principle of transparency and dialogue, Fahmi noted; there is a problem of trust on all

sides and he does not want anyone to accuse him or the committee of hidden agendas. Fahmi's approach is to avoid using the committee for political positioning, and to keep matters to a technical level only. The question, he said, is how to satisfy all sides. If the process stagnates, it will be very dangerous -- tensions and distrust will only increase. Fahmi believes the committee needs to move ahead, but in a way that does not make the situation more complicated; priorities are necessary. The committee focused first on accelerating relatively non-controversial normalization aspects like compensation for that reason.

14. (C) Emphasizing the need to be clear with all about the committee's work, Fahmi noted he met with all political parties and leaders, including Vice President Tariq al-Hashimi (Tawafuq, Sunni Arab). He invited Hashimi to nominate an observer to the committee, an invitation Hashimi has not taken up to date. Fahmi claimed that Hashimi's only criticism was that the committee is only dealing with Kirkuk and not other disputed territories (i.e., Ninewa). (Note: The committee currently has three current and one former Kirkuk Provincial Council members (one each representing Sunni Arabs, Turkmen, Assyrian Christians and Kurds), three GOI ministers (one Shia, one Kurd and Fahmi), one member of the Council of Representatives (Shia), the head of the Commission to Resolve Real Property Disputes (Shia) and one KRG minister. End Note).

#### Work on Boundary Change Recommendations Still Ongoing

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15. (C) Moving to boundary changes, Fahmi said that even though Transitional Administrative Law 58 calls for the

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Presidency Council to submit internal boundary adjustment recommendations to the Council of Representatives (CoR), al-Hakim and Itelaf asked the committee to develop recommendations for areas around Kirkuk and in the south. The committee is looking into all Saddam-era boundary changes to determine which changes were political and which were technical, Fahmi said; the committee will only deal with boundaries that were originally adjusted for political reasons. PM Maliki appointed Itelaf-member Hanan al-Fatlawi to the committee specifically to work on boundary issues related to the south, Fahmi commented. Once the committee agrees on its recommendations, they will be sent to the PM and the Presidency Council (and then the CoR) for a political decision.

16. (C) Fahmi said recommendations on revising Kirkuk province's boundaries are complete and work on Karbala is almost done. For Kirkuk province, the committee generally agrees that the districts of Kalar and Chemchemal in Sulaymaniyah, Kifri in Diyala and Tuz Khurmato in Salah ad Din should be restored to Kirkuk province (since renamed Ta'mim), which would bring it back to its pre-1976 borders. The committee is still collecting technical information about the southern part of Anbar province, which is being studied for a possible move to join Karbala province. Fahmi opined that once these two areas are addressed with the agreement of the two major governing political blocs (Kurd and Shia), it would be easier to deal with Ninewa province later. The committee is not discussing Ninewa boundary changes now. He asserted that if these recommendations are sound and fair when they get to the political level, opponents (i.e., the Sunnis) will not have a leg to stand on. He is trying to narrow opportunities for political problems in his approach, he said. It is possible the boundary changes package would be ready to forward to the political level soon, Fahmi opined.

#### Normalization Not As Controversial

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¶7. (C) Since the committee began meeting again in August, Fahmi said it gave priority to moving ahead on normalization -- rectifying Saddam-era displacements of persons and property, a relatively non-controversial piece of the puzzle. All groups agree with the "legal and moral need" to resolve the voluntary return and movement of persons (and particularly their compensation) in a way that will not create more injustice, Fahmi commented. Since August, the committee has coordinated with relevant ministries, such as Interior and Trade, to resolve remaining glitches in the return of wafadeen Arabs to their original provinces and in the distribution of their compensation. Fahmi noted good progress, citing 3000 applications approved and more than 2000 checks cut (Note: Actual distribution of checks lags behind this number of signed checks, according to Kirkuk PRT. End note.)

¶8. (C) The Commission to Resolve Real Property Disputes (CRRPD) needs to accelerate its work on property disputes, Fahmi asserted; it is taking too long. The committee wanted to rescind several Saddam-era Revolutionary Command Council (RCC) decisions to address the slow pace, but the Council of Ministers (COM) legal advisor told Fahmi that the CRRPD process was the constitutional one, and changing the process would require a different approach than rescinding RCC orders.

Census Should be Simultaneous, although  
Referendum Deadline Will Still Be Missed

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¶9. (C) For a census, according to Fahmi, there are two possibilities: conduct a census in its normal definition sequentially after normalization is complete or conduct what amounts to a voter registration simultaneously as normalization continues. Waiting for normalization to be complete is not acceptable, Fahmi said; therefore, the committee is looking at alternatives using 1957 census data from before Arabization policies changed demographics. He said the committee is consulting with Ministry of Planning (MOP), Ministry of Interior and the Independent High Elections Commission (IHEC) on how to move ahead. The MOP said it did not have the capacity to do a census within the next year, Fahmi stated, and even so, it would not provide what we need for a referendum, which is really a voter registry. The 1957 census could be used, Fahmi said. The MOI has the original registration data used in the census, he said, which could be amended to add descendants and subtract the deceased to develop a voter registry that reflects those originally living in Kirkuk province before Saddam-era Arabization and their descendants. (Note: See ref B for why this approach is problematic. End Note.)

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¶10. (C) The committee asked the MOI and IHEC if such an approach could work but neither has replied yet, Fahmi continued. The IHEC told the committee it could organize a referendum, but several questions must be addressed, including a budget, the referendum question and who votes, when and where. Fahmi said the IHEC sent a letter to the Prime Minister outlining these issues, which the PM passed to the committee to draft a reply.

¶11. (C) Fahmi acknowledged that meeting the December 31 deadline as outlined in the Constitution is not possible but that it should not be a political problem. The point, he asserted, is for the committee to get everything moving ahead and to show it is doing all that it can. That way, a delay can be viewed as technical and not political, an outcome that is acceptable to the Kurds. He admitted, however, that the Kurdish leadership has not done enough to prepare its public for the delay. Fahmi said he thought there was a consensus among the main political parties that April or May might be a feasible timeframe to hold a referendum.

But, Political Problems Are Unavoidable,  
Especially Regarding Boundary Changes  
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¶12. (C) Senior Advisor said it was obvious to him from a recent trip to Kirkuk, Irbil, and Mosul that communities like Sunni Arabs are fearful of the Article 140 process. So it was difficult to see how there could be any prospect of agreement, when the committee referred its recommendations to the Presidency Council, if Sunni concerns about Kurdish inroads in Ninewa Province were not also addressed, in addition to the recommendations on Kirkuk and Karbala. Fahmi said the committee will do the best that it can, but once the issue becomes political it will get caught up in the balance of power struggle in Iraq. Fahmi asserted that VP Hashimi will oppose any boundary proposal, even if Ninewa was included, and the matter will have to go to arbitration or an international mediation.

¶13. (C) He claimed the Arabs in Kirkuk proper are not too concerned about Article 140, especially if they can see a democratic process leading to a solution and if we give no excuse to the Kurds to justify any Kurdish heavy-handedness. Fahmi said the Turkmen are split into Sunni and Shia camps, and political leaders like the Iraqi Turkmen Front will never accept Article 140. He is working towards allaying the fears of those not in the Turkmen leadership. For example, the last resolution issued by the committee (number 6) specifically addressed the dispossession of Shia Turkmen lands by Saddam outside of Kirkuk city, in part to gain traction with the Shia Turkmen community to support the overall process. Fahmi opined that if the committee could solve the Shia Turkmen issue, perhaps even the Sadrists would fully support implementation.

¶14. (C) The key is a fair and transparent process, Fahmi repeated. If we can define a fair solution, we can adapt it to what is happening on the ground. In Ninewa, Fahmi said there are Christians, Arabs, Kurds and other minorities and we will need to talk to everyone. We want a lasting solution, with consensus and not coercion.

Comment  
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¶15. (C) The committee's technical progress over the last few months will help alleviate concerns about a referendum delay past December 31, but boundary issues will remain the primary political obstacle to implementing Article 140. Concentrating on Kirkuk province and Karbala province boundary changes and deliberately leaving a likely flashpoint like Ninewa province from committee deliberations guarantees that Sunni Arabs will feel squeezed out of the process. It also means any technical recommendations to the Presidency Council will fail to gain agreement from VP Hashimi, which would mean arbitration or UN mediation would be necessary (as outlined in TAL 58). In short, the Article 140 Committee may manage to narrow the issues in play, but it will likely stall out at the political level, due to the opposition of Sunni VP Tariq al-Hashimi. In that case, the law provides for the Presidency Council to have recourse, by unanimity, to a neutral arbitrator or, failing that, to the UNSYG for mediation. Meanwhile, uncertainty over how these sensitive provincial border/Kirkuk issues will be sorted out has fueled not only Arab-Kurd tensions in the north, but also the insurgency. Ambassador will discuss next steps with newly arrived UNAMI envoy De Mistura.  
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